

Appl. No. 10/000,247
Amdt. dated June 29, 2005
Reply to Office Action of December 8, 2004

PATENT

REMARKS/ARGUMENTS

Claims 1, 4-5, 41, 43-44, 48, and 50-62 are pending in the applications. Applicant, by this paper, cancels claims 42, 45-47, and 49 without prejudice. Applicant amends claims 1, 43, 44, and 48 and adds new claims 50-62. No new matter is added in the new claims.

Response to Restriction Requirement

In response to the restriction requirement, Applicant elects Group I including claims 1, 4-5, 41-43, 44-45, and 48 without traverse. Applicant has canceled, without prejudice, the claims directed to the non-elected group.

Discussion of Rejections Under 35 USC §101

Claims 1, 4-5, 41-43 were rejected under 35 USC §101 as directed to non-statutory subject matter because the claims are not recited within the technological arts. Applicants respectfully traverse the rejections under 35 USC §101.

The Examiner alleges that 35 USC §101 includes an implicit "technological arts" requirement. The Examiner acknowledges that there are only three known judicially created exceptions to patentable subject matter covered by 35 USC §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". The Examiner attempts to create another category of excepted subject matter to include those failing a "technological arts" analysis. However, the Examiner does not provide any support for a technological arts analysis, and does not even describe how such an analysis can be performed. The Examiner attempts to cite to a non-precedential, unpublished, Board of Patent Appeals and Interferences (BPAI) opinion as supporting the requirement of a "technological arts" analysis. However, the opinion of the BPAI does not even support such a proposition.

The Examiner points to examples of what not to focus on when performing a technological arts analysis, but does not even attempt to provide an objective definition of how a technological arts analysis is to be performed. Applicant respectfully requests the Examiner provide an explicit definition of how to perform such a "technological arts" analysis that is not defined in the negative.

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Applicant respectfully points out that claims 1, 4-5, and 41 and 43 are directed to a process, one of the categories explicitly set forth in 35 USC §101. Further, there is no question that the process has utility, specifically, arranging for the transporting of freight. The claimed process further produces a "useful, concrete and tangible result." There is no question that arranging for the transport of freight is useful, concrete, and tangible. For the process results in the freight being transported.

The Examiner concludes a lack of utility because "none of the method steps recite computer implementation." However, computer implementation is not a requirement under 35 USC §101. Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 USC §101.

Discussion of Rejections Under 35 USC §103

Claims 1, 4-5, 41, 44, and 48 were rejected under 35 USC §103(a) as allegedly unpatentable over allegedly Admitted Prior Art (AAPA) in view of U.S. Patent No. 5,880,958 to Helms et al. (hereinafter Helms) in further view of U.S. Patent No. 6,598,027 to Breen, Jr. et al. (hereinafter Breen). Claims 42-43 and 45 are rejected under 35 USC §103(a) as allegedly unpatentable over allegedly Admitted Prior Art in view of Helms and Breen and further in view of U.S. Patent No. 6,349,306 to Malik (hereinafter Malik).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art reference, or references when combined, must teach or suggest all of the claim limitations.

Claim 1 includes "reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier" and "receiving, at the carrier dispatch center, freight status information transmitted by the communications device and redirected by the network management facility." These features are not taught nor suggested by the cited references.

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The Examiner contends that the alleged admitted prior art in combination with Helm, Breen, and Malik teach "reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier." Applicant respectfully disagrees.

The Examiner concedes that the alleged admitted prior art in combination with Helm and Breen fail to disclose this claimed feature. However, the Examiner contends that because Malik discusses a reconfigurable network management system, it would have been obvious to arrive at Applicant's claimed invention.

Malik, in the portion cited by the Examiner, states: "Multiple configuration records may be transferred to multiple models in the database, for reconfiguring multiple network devices." *Malik* Col. 2 ll. 24-26. However, there is no discussion in any of the cited references of reconfiguring a network management facility to redirect a portion of third party communications to a carrier dispatch center.

None of the references describe the ability to of a network management facility to redirect a portion of a third party communications and none of the references provide any motivation to attempt to reconfigure a network management facility to perform such a redirection. Additionally, none of the cited references describe receiving freight status information transmitted by a communications device and redirected by the reconfigured network management facility. Thus, the combination of references fails to teach or suggest all of the claim limitations.

Malik merely describes reconfigurable network devices. There is no discussion nor motivation to lead one to believe that a network management facility could be reconfigured in the manner claimed. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed Cir. 1990).

Additionally, even if Malik describes reconfigurable network devices, there is no reasonable expectation that the configuration management methods and apparatus of Malik are applicable or even relevant to the type of network management facility used in a freight transportation industry. There is no reasonable expectation that the configuration management

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methods of Malik can be implemented in a network management facility used in a freight transportation industry in a manner that would allow redirection of communications from third party communication devices. Thus, there is no reasonable expectation of success in the combination.

Therefore, Applicant respectfully requests reconsideration and allowance of claim 1 because the Examiner fails to establish a prima facie case of obviousness. The combination of references fail to teach or suggest all claim limitations, there is no motivation to modify or combine the references in the manner that would result in Applicant's claimed invention, and there is no reasonable expectation that the references can be combined in the manner suggested by the Examiner.

Claims 44 and 48 include similar features to those discussed above in relation to claim 1 and are believed to be allowable for the same reasons provided above in relation to claim 1. Applicant respectfully requests reconsideration and allowance of claims 44 and 48.

Claims 4-5, 41, and 43 depend from claim 1 and are believed to be allowable at least for the reason that they depend from an allowable base claim. Applicant respectfully requests reconsideration and allowance of claims 4-5, 41, and 43.

Discussion of New Claims

Applicant adds new claims 50-62. Claims 50-58 are believed to be allowable at least for the reason that they depend from an allowable base claim. Independent claim 59 is believed to be allowable at least for the reasons that the references of record fail to describe "temporarily reconfiguring a communications facility to allow communications between the communications device and the first carrier dispatch center during at least a portion of the period that the third party provider transports the freight." Claims 60-62 are believed to be allowable at least for the reason that they depend from nana allowable base claim.

Applicant respectfully requests allowance of new claims 50-62.

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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-845-8503.

Respectfully submitted,

Dated: June 29, 2005

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